

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DESIREE B. OLAECHEA,

Plaintiff,

-against-

BRENTWOOD UNION SCHOOL DISTRICT,

Defendant.

-----X

AZRACK, United States District Judge:

For Online Publication Only

ORDER

20-CV-1037 (JMA) (ARL)

**FILED
CLERK**

10/26/2020 4:58 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

On March 17, 2020, pro se plaintiff Desiree B. Olachea (“Plaintiff”) filed a complaint against the Brentwood Union School District (“Defendant”) alleging employment discrimination and retaliation claims, together with an application to proceed in forma pauperis. By Orders dated April 21, 2020 and August 18, 2020, Plaintiff’s applications to proceed in forma pauperis were denied, and Plaintiff was ordered to remit the Court’s filing fee. On September 9, 2020, Plaintiff paid the filing fee, but did not present a summons to the Court for issuance by the Clerk of the Court. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Accordingly, service should have been made upon the defendant by June 15, 2020. Given Plaintiff’s pro se status and recent payment of the filing fee, the Court, in its discretion, extends the time for service by forty-five (45) days. See Tracy v. Freshwater, 623 F.3d 90, 101 (2d Cir. 2010) (“[A] pro se litigant generally lacks both legal training and experience and, accordingly, is

likely to forfeit important rights through inadvertence if he is not afforded some degree of protection.”). The Second Circuit has interpreted Rule 4(m) “to give courts both the discretion to grant extensions of the period of service even where no good cause has been shown and, in the absence of good cause, to deny such extensions—that is, a court ‘may grant an extension . . . but is not required to do so.’” Harper v. City of New York, 424 F. App’x 36, 39 (2d Cir. 2011) (summary order) (quoting Zapata v. City of New York, 502 F.3d 192, 197 (2d Cir. 2007) (“[t]he district court’s determinations on whether good cause is present (and, if so, how long an extension would be appropriate) are exercises of discretion.”)).

Accordingly, Plaintiff’s time to serve the defendant and file proof of such service is extended by forty-five (45) days from the date of this Order. The Clerk of Court shall mail a blank summons form to Plaintiff together with this Order. Plaintiff shall complete the first page of the summons and return it to the Court for issuance. Once issued, the Clerk of Court shall mail it to Plaintiff and Plaintiff shall serve the issued summons, the complaint, and this Order upon Defendant. Further, Plaintiff shall file proof of service with the Court. Plaintiff is cautioned that her failure to timely comply with this Order will lead to dismissal of her complaint without prejudice pursuant to Federal Rule of Civil Procedure 4(m) and judgment shall enter without further notice.

Although Plaintiff paid the filing fee to commence this action, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that, should Plaintiff seek leave to appeal in forma pauperis, any appeal from this Order not be taken in good faith. Therefore, in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of the Court is directed to mail a copy of this Order to the pro se plaintiff at her address of record together with a summons form.

SO ORDERED.

Dated: October 26, 2020
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE